

BEFORE THE

IN THE MATTER OF:)
)
REGULAR MONTHLY BUSINESS)
MEETING)
)

3 CHAIRMAN EATON: Good morning, everyone,

4 and welcome to the second day of the February board
5 meeting of the California Integrated Waste Management
6 Board. For those of you who are in the audience -- is
7 there an echo?

8 (Laughter)

9 CHAIRMAN EATON: There are speaker slips
10 at the back and should you desire to speak on any item on
11 today's agenda, please fill out that form and bring it up
12 here to Lisa Dominguez on my left and she'll make sure
13 that you get on the agenda.

14 In order to establish a quorum, Madam
15 Secretary, would you please call the roll.

16 BOARD SECRETARY: Board Members Jones.

17 BOARD MEMBER JONES: Here.

18 BOARD SECRETARY: Moulton-Patterson.

19 BOARD MEMBER MOULTON-PATTERSON: Here.

20 BOARD SECRETARY: Pennington.

21 BOARD MEMBER PENNINGTON: Here.

22 BOARD SECRETARY: Roberti.

23 Chairman Eaton.

24 CHAIRMAN EATON: Here. Quorum has been
25 established. All right. Just as sort of a couple of

1 house administrative items, as you know, we moved through
2 the agenda almost in toto. There's still a few remaining
3 items, an item that is going to be continued from
4 yesterday. That's Item A, the report, but I think before
5 we get to that, which may generate some discussion, I'll
6 ask if there are any ex parte communications to report.

7 Mr. Pennington.

8 BOARD MEMBER PENNINGTON: No,
9 Mr. Chairman -- well, I did speak to Cupps this morning
10 but that was about it, and that was about the extent of
11 the conversation.

12 (Laughter)

13 CHAIRMAN EATON: It's nice that that
14 elevation has taken place.

15 (Laughter)

16 BOARD MEMBER JONES: I had two,
17 Mr. Chairman, one with Joe Montoya and one with
18 Mr. Cupps.

19 CHAIRMAN EATON: Ms. Patterson.

20 BOARD MEMBER MOULTON-PATTERSON: I didn't
21 speak to anyone.

22 BOARD MEMBER JONES: We do have an echo.

23 CHAIRMAN EATON: I think it's the walls.
24 The voices are echoing off the walls, sort of a sounding
25 board. And I just had a short meet-and-greet with Joe

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1 Montoya as well.

2 Any reports or items of interest any Board
3 Members want to bring to either the Board's attention or
4 the public's attention? If not, we'll start in with Item
5 Number 57. We'll do 57, 59 and then we'll go to
6 continued Item A. And you're presenting the vision
7 statement?

8 MS. PACKARD: I was looking a little
9 farther into the horizon than I should have been.

10 Good morning, Chairman Eaton and Board
11 Members. My name is Rubia Packard and I'm here to
12 present Agenda Item 57, which is consideration of
13 adoption of the 21st century policy project vision
14 statement.

15 This agenda item presents a 21st century
16 policy project vision statement for Board consideration
17 and adoption. The vision statement was developed through
18 a series of sessions with internal and external
19 stakeholders, with Board Member-led teams of staff
20 assisting the Board in synthesizing the key points from
21 the stakeholders' input into the proposed vision of a
22 desired future contained in the vision statement
23 presented in this item.

24 In the first phase of this project, the
25 Board explored current and emerging waste management

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1 trends and issues through a series of internal and
2 external stakeholder sessions. In the second phase of
3 this project, we identified possible future scenarios and
4 an issues framework to assist our analysis. Board
5 Members and Board staff then utilized all of this
6 material in a team approach to combine trends, issues and
7 scenarios to craft a vision for the 21st century. The
8 vision statement is in the agenda item, and I believe
9 that Board Member Jones wanted to talk a little bit about
10 the vision statement itself as he led one of the Board
11 teams that worked on this.

12 BOARD MEMBER JONES: Thanks, Rubia.

13 The original resolution that came forward
14 I think captures what the working groups put together.
15 We actually had -- besides the normal working groups, we
16 convened another one to try to tighten down some of the
17 issues that were pretty broad coming out of the
18 Sacramento convention center. And while I think that the
19 original version of the vision statement is dead on, it
20 talks a little bit about the past and I think the vision
21 needs to talk about the future.

22 So I want to offer a -- and hopefully that
23 all of those participants who have worked with Mr. Eaton
24 and I to put this thing together will be comfortable in
25 the idea that I'm going to offer a substitute motion that

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1 says, besides all the normal whereases, "Now, therefore,
2 be it resolved that the Board adopts the following 21st
3 century policy project vision statement," and then it
4 says, "In the future, materials are managed as part of a
5 sustainable system in which long-term costs and benefits
6 are not accepted as being fully determined until all
7 direct and residual impacts of our actions are
8 identified.

9 "As part of this, the systems approach
10 compels us to capitalize on historically untapped
11 resources in the form of recovered recyclables. This
12 system minimizes our dependency on the virgin materials,
13 considers social equity issues, minimizes pollution and
14 discards, and safely manages unavoidable discards. In all
15 actions, this system considers in response to cross-media
16 environmental impacts and assesses emerging needs and
17 trends in the context of the California's statewide
18 integrated waste management infrastructure. All
19 stakeholders, including business, government,
20 environmental groups and citizens, work together as equal
21 partners to preserve and strengthen this system. This is
22 accomplished through sharing the information on an open
23 and consistent basis, balanced use of economic incentives
24 and regulatory authority, a planned and open process for
25 participation in decision making by all parties.

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1 "The Board is an aggressive advocate of
2 sustainable materials management practices and their
3 associated benefits to the public, business and
4 government. The Board does this through education,
5 practical assistance, current and comprehensive
6 information on materials management, and progressive
7 research and development program. The Board, as part of
8 Cal/EPA and the administration, will also vigorously
9 support and promote legislative efforts designed to
10 improve the performance and responsiveness of
11 California's Integrated Waste Management Program."

12 I think that that's the heart of the
13 motion that I'm going to offer, and I think that it says
14 a lot for this agency to be in a proactive stance as
15 opposed to in a reactive posture.

16 And I think Mr. Eaton might have some
17 comments on the process because the stakeholder input and
18 the staff's help in putting this together was invaluable
19 and brought an awful lot of different medias together to
20 determine what the future should look like, and I think
21 that all parties involved did an outstanding job.

22 CHAIRMAN EATON: You're absolutely
23 correct, Mr. Jones, although you made me nervous offering
24 a substitute motion. I thought you were going to
25 substitute and draft Ms. Moulton-Patterson again for the

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1 21st century project.

2 (Laughter)

3 BOARD MEMBER JONES: She may have to. Who
4 knows.

5 CHAIRMAN EATON: Which would have been
6 fine with me as well, but you know, any time I'm watching
7 out for you over there. But truly, I think also in
8 addition that your hard work, and as well as I think
9 Rubia Packard and her staff and all of the individuals
10 who made up the initial project from the stakeholders as
11 well as actually the additional Board staff, when we met
12 over at the convention center on that second day and sort
13 of just hammered out some things.

14 I think what we had was we had some of the
15 best and the brightest thinkers actually for the first
16 time in the context where they were able to show that
17 even though they may be in a particular programatic area,
18 that their skills and their judgment and their visions
19 were truly outstanding, not only in the programatic area
20 but outside the box, and for that I was very grateful as
21 a participant as well as a Board Member.

22 So without any more -- just for clarity
23 purposes, was that a substitute motion? Is that the new
24 resolution?

25 BOARD MEMBER JONES: That's what I would

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1 like it to be, as a revised resolution.

2 CHAIRMAN EATON: And you have that so we
3 can attach it as part of the record?

4 BOARD MEMBER JONES: I do.

5 BOARD MEMBER MOULTON-PATTERSON: I'll
6 second it.

7 CHAIRMAN EATON: Okay.

8 BOARD MEMBER MOULTON-PATTERSON: And I
9 would just like to say as a new Board Member, this was
10 really informative to me and I appreciate all your hard
11 work and all the staff's hard work. This really is
12 great. Thank you.

13 BOARD MEMBER PENNINGTON: Mr. Chairman.

14 CHAIRMAN EATON: Mr. Pennington. And I
15 should also say before, and it was really due to Dan who
16 really got a lot of this going underway, but go ahead,
17 Mr. Pennington.

18 BOARD MEMBER PENNINGTON: Thank you,
19 Mr. Chairman.

20 I think this substitute resolution is very
21 good and covers an area that I was a little concerned
22 about and that is our strategic plan, and the report
23 itself doesn't really talk about our strategic plan
24 except in the -- sorry. It's too early in the morning.
25 That's good.

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1 CHAIRMAN EATON: I tell you, no more
2 decaffeinated coffee for you. I'm getting you the real
3 stuff.

4 (Laughter)

5 CHAIRMAN EATON: All right. So we have a
6 motion --

7 BOARD MEMBER PENNINGTON: See, that's why
8 it's time for me to leave.

9 (Laughter)

10 CHAIRMAN EATON: It's a substitute motion
11 by Mr. Jones and seconded by Ms. Moulton-Patterson.

12 Madam Secretary, would you please call the
13 roll.

14 BOARD SECRETARY: Board Members Jones.

15 BOARD MEMBER JONES: Aye.

16 BOARD SECRETARY: Moulton-Patterson.

17 BOARD MEMBER MOULTON-PATTERSON: Aye.

18 BOARD SECRETARY: Pennington.

19 BOARD MEMBER PENNINGTON: Aye.

20 BOARD SECRETARY: Roberti.

21 Chairman Eaton.

22 CHAIRMAN EATON: Aye.

23 Okay. Item Number 59.

24 You aren't going to fool us and make this
25 a tire hearing; are you?

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1 (Laughter)

2 MS. BORZELLERI: No.

3 CHAIRMAN EATON: Okay.

4 MS. BORZELLERI: Good morning, Board

5 Members. Deborah Borzelleri from the Legal Office.

6 The agenda item for consideration today

7 deals with whether under what circumstances the Board

8 should retain the copyrights to copyrightable materials

9 that are produced for the Board by an outside contractor

10 or grantee. The need for this item was identified as a

11 result of copyright issues that continue to arise in

12 contracts and other agreements that the Board enters

13 into.

14 Typically our contract grant agreement and

15 interagency agreement boilerplate language retains for

16 the Board the copyrights or other intellectual property

17 rights when we enter into these agreements. We've taken

18 this position basically because the agreement is using

19 Board funds. The Board should be credited with the

20 materials produced and should be able to freely use the

21 materials as it sees fit, and we don't wish to make a

22 gift of public funds, and also because the Board should

23 generally maintain appropriate control over these

24 materials and any adaptations to the materials so that

25 our messages aren't taken out of context or the Board

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1 could be placed in some sort of false or detrimental
2 light. In some instances, I think as you all are aware,
3 in entering into agreements with the universities, the
4 contracting entity maintains that it must retain the
5 copyrights.

6 Universities have provided two basic
7 rationales for their position. The first is they
8 maintain they should have academic freedom and the
9 faculty members' right to write then requirements to
10 independently publish and research various studies in
11 that type of materials. Also, occasionally the materials
12 that we want access to have already been copyrighted by
13 some other entity, so there could be confusion or
14 problems resulting from that prior copyright ownership in
15 the event that we do some sort of derivative work, which
16 is what we're talking about.

17 As noted in the agenda item, many state
18 agencies had encountered these same issues with the
19 universities. As a result, a work group was formed by
20 the Department of General Services among the state
21 agencies and the universities.

22 A workshop was held in late 1998 which
23 resulted in some alternatives and model clauses that
24 could be used in the agreements. One point that came out
25 in the workshop was the notion of allowing a license to

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1 use the materials by either the contracting entity or the
2 state agency as an alternative to retaining the entire
3 copyrights. This is significant because it can allow
4 broad use of the materials. Where the contracting entity
5 is a non-profit, it alleviates concerns about gifts of
6 public funds and it could simplify things where ownership
7 of an original work or its derivative work is at issue.

8 Another note that you need to be aware of
9 is the legislature is also interested in this issue from
10 a profit perspective. Senator Escutia has introduced
11 legislation, SB 875 -- I don't know if you've seen it --
12 that would address the State's interest in property
13 rights and maximize protection of those rights and
14 profits that can be obtained. The legislation would
15 require the establishment of a special advisory committee
16 to develop recommendations on how the State's
17 intellectual properties should be organized and managed
18 which may result in some future legislation that could
19 affect any policy the Board adopts today.

20 We basically have three alternatives
21 before you today. The first alternative would be to
22 establish a no-exception policy that copyrights would be
23 assigned to the Board in every contract or other
24 agreement where copyrighted materials are produced.

25 The second alternative would be to issue a

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1 policy that copyrights would be assigned to the Board in
2 every contract or other agreement where copyrightable
3 materials are produced but allow for an exception if the
4 Executive Director determines that good cause exists to
5 allow the contractor to retain the copyright, and then
6 the Board would be given a broad license to freely use
7 the materials. The Board may also wish to provide some
8 direction on how that determination should be made. We
9 mentioned some factors in the agenda item. I don't know
10 if you want to go through those and we can, but I won't
11 unless you ask me to.

12 The third alternative would be identical
13 to the second, but an item would need to be brought
14 before the Board to make the decision each time. Now,
15 one point I would like to raise is that where the Board
16 is hearing an agenda item for a scope of work or a
17 contract award, any copyright issues can be raised at
18 that time. However, where the Board is entering into any
19 agreement, the approval of which is delegated to the
20 Executive Director, these would not ordinarily come
21 before the Board. And we're asking in the interest of
22 preventing delays in that type of situation that the
23 Board allow a delegation to the Executive Director to
24 make the determination when it's a delegated agreement.

25 This concludes my presentation.

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1 CHAIRMAN EATON: Questions of

2 Ms. Borzelleri?

3 I have just a couple for the options that
4 were presented. With option two, allow exception unless
5 the Executive Director determines it to be the case, and
6 then subsequently you said there's a delegated authority
7 that's already existing, that that would be part and
8 parcel of that authority. In order to effectuate that so
9 there's not confusion, I would just ask you isn't it
10 better if we just -- the recommendation might be that all
11 items that come before the Board, because all these
12 contracts have to come before the Board, that the
13 copyright issue is just noted by staff much like what we
14 do with cost recovery and just be touched upon, and
15 therefore the Board can either raise the issue and make
16 that determination and then the policy would be consistent
17 with the Executive Director's already existing delegation
18 in those other contracts. Otherwise, you're going to get
19 into a situation, right, where you're going to ask -- I
20 understand. I just think it is cleaner that those
21 contracts that come before us will --

22 MS. BORZELLERI: The Board makes the
23 determination, and if they're delegated --

24 CHAIRMAN EATON: Well, the issue should be
25 raised at some point because you'll already know if

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1 there's a problem --

2 MS. BORZELLERI: Right.

3 CHAIRMAN EATON: -- if the contract comes
4 to us by, let's say, with the University of California --

5 MS. BORZELLERI: Right.

6 CHAIRMAN EATON: -- I'm just saying you
7 will have already had some kind of communication or
8 discussion, I'm sure, on that kind of issue. That would
9 just be brought to the Board in the normal course of
10 action. I'm not trying to make a separate process, I'm
11 just saying --

12 MS. BORZELLERI: Right.

13 CHAIRMAN EATON: -- that what comes before
14 the Board would be and what's delegated to the Executive
15 Director would be simply delegated unless there's a
16 different reason for it.

17 MS. TOBIAS: I think we're -- I don't have
18 a problem with that. I think we're just trying to deal
19 with the difference between the ones that come to the
20 Board and the ones that would just be normally sent -- or
21 signed off by the Executive Director.

22 CHAIRMAN EATON: Right.

23 MS. TOBIAS: So perhaps what it should --
24 what the motion should be is that it is the Board that
25 makes that determination and then we may want to look at

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1 the delegation and make sure that it reflects the fact
2 that the Executive Director could make that determination.
3 We were just worried that there might be times where there
4 would be a problem either after the Board acts or on
5 something that the Board had seen a scope on but the
6 problem ended up later and then having to go back to the
7 Board, which would delay a contractor agreement.

8 I think in Deborah's presentation she did
9 try to make sure that whenever an item would be coming to
10 the Board, of course the issue would be raised there if
11 it was know at that time, and it is something that Legal
12 always raises and I think the staff is fairly aware of
13 the issues as well. So I think we've -- Legal feels this
14 is definitely a Board decision when the Board seeing --
15 has the approval.

16 CHAIRMAN EATON: I think we're saying the
17 same thing, just kind of semantics. That's all I have.

18 Mr. Jones.

19 BOARD MEMBER JONES: I don't have a
20 problem with what you're suggesting. I think that the
21 key phrase is "when the Board sees it", and the Board
22 needs to see it. So we bring it up, it seems like, ever
23 since the Cy Schwartz thing that went along. So I don't
24 know what we have to strike in this thing.

25 MS. TOBIAS: What if we did number three

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1 and after in the second line it says, "But allow an
2 exception if the Board," and then do a comma and say, "Or
3 the Executive Director under his delegation determines
4 good cause." Therefore, the Board would be acting first
5 and then it would be clear the Executive Director would
6 only be acting in a delegation-type of situation. Would
7 that meet with your approval?

8 CHAIRMAN EATON: In the "now, therefore,
9 resolved" clause?

10 MS. TOBIAS: Sorry. I was looking under
11 options. I'm sorry. Let me look at the resolution.

12 CHAIRMAN EATON: That's the one that has
13 the binding effect.

14 MS. TOBIAS: I would just -- I think that
15 should say, "Allow for an exception if the Board or the
16 Executive Director under his or her delegation."

17 BOARD MEMBER JONES: I don't think that
18 goes to what Mr. Eaton is saying. Mr. Eaton is saying
19 that the Board will make the determination and then it's
20 a normal delegated authority after we've made the
21 delegation, I mean after we've made the finding.

22 MS. TOBIAS: It's my understanding that
23 not all contracts come to the Board, but do you want --

24 CHAIRMAN EATON: Right. There's two sets
25 of contracts that kind of come. There's the sort of

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1 everyday, and we've actually tried to streamline some that
2 don't come to the Board, kind of the ongoing contracts.

3 MS. TOBIAS: Run of the mill.

4 MS. FISH: What you call mandatory
5 contracts.

6 BOARD MEMBER PENNINGTON: It's highly
7 unlikely that this kind of contract is one that wouldn't
8 come to the Board.

9 CHAIRMAN EATON: Correct. Right.

10 MR. CHANDLER: I think what we're trying to
11 address is the situation where, let's say, we have a
12 mandatory contract maybe with a university to do some lab
13 services or whatever, and that's a standard assistance
14 that we require each year. Currently I have delegation to
15 handle those contracts. If we run into a copyright issue,
16 how do we keep that process streamlined, your word, and
17 prevent it from being delayed by bringing now an agenda
18 item forward to have the Board decide the copyright issues
19 so that I can then sign the contract with the right kinds
20 of determinations or features in the language of the
21 contract that makes that clear that this Board wants to
22 retain any copyright to any products that are produced? I
23 think we're just trying to work out a process here that
24 doesn't add another layer.

25 BOARD MEMBER PENNINGTON: Isn't this the

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1 kind of thing you probably see coming ahead? You know
2 what contracts you've got working and you can look and say
3 gee, there might be a copyright problem here. I'd better
4 alert the Board.

5 MS. TOBIAS: I guess our feeling was that
6 in the -- you know, one of the unusual situations that
7 we're moving along on a contract, it is within the
8 Executive Director's expressed delegation from the Board
9 that part of that delegation ought to include that
10 ability. I don't know -- it seems like the Executive
11 Director -- we would hope that we would have advance
12 notice, but I think what we're trying to guard against is
13 that rare situation where a contract derails for 30 or
14 less days when we can't get to the Board.

15 Would it work if it said, "Allow for an
16 exception if the Board or the Executive Director when
17 acting under expressed delegation"?

18 CHAIRMAN EATON: That's what I'm trying to
19 get to.

20 MS. TOBIAS: When I say "expressed
21 delegation", then it has to be under, you know, the
22 delegation that the Board has already agreed to. I think
23 everyone understands, certainly I know Legal does and the
24 Executive Director understands, that this is something the
25 Board would like to see whenever possible. I don't see

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1 this as any attempt to minimize it or take it away from
2 the Board but simply to deal with that rare circumstance.

3 The other option is to basically pick
4 option three where it just says that the Board determines,
5 and if those times come up where we can't do that, we'll
6 come to a Board meeting, as we usually do on anything that
7 needs to come before the Board.

8 BOARD MEMBER JONES: If a contract gets
9 down to the last 30 days and the copyright issue comes
10 forward, it may mean that we don't fulfill a copyright --
11 I mean don't fulfill a contract. Tell me the down side
12 of that, because the copyright issue may be the issue
13 that breaks this deal anyway.

14 MS. FISH: Board Member Jones or the Board,
15 perhaps we could build a notice requirement into the
16 delegation authority so that the Board is noticed if the
17 Executive Director exercises that authority, so that you
18 have an opportunity as we do with the scope of work to
19 review it and make a decision before it's made. Would
20 that work?

21 BOARD MEMBER PENNINGTON: Perhaps I would
22 suggest on the other side of that we just take option
23 number three and, as our general counsel says, there might
24 be that rare occasion. Let's let that rare occasion
25 happen and we can revisit it. If we see it's a problem

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1 that contracts are being held up because of that
2 particular issue then maybe we revisit it, but if it's not
3 going to be a big deal, then just leave it a priority in
4 the hands of the Board.

5 BOARD MEMBER JONES: That works for me.

6 BOARD MEMBER MOULTON-PATTERSON:

7 Mr. Chairman.

8 CHAIRMAN EATON: Ms. Moulton-Patterson.

9 BOARD MEMBER MOULTON-PATTERSON: I would
10 prefer option two because I can see a problem when the
11 Board wouldn't be meeting, but certainly I'll go with the
12 majority of the Board, but I have no problem with letting
13 the Executive Director decide if we're not meeting on
14 this.

15 CHAIRMAN EATON: I don't think -- I think
16 we're all saying the same thing. We're just trying to --
17 I agree that I don't have any problem. At least this
18 Executive Director has always brought to the attention of
19 the Board Members, in his capacity, any issue that
20 arises.

21 MS. TOBIAS: That's why I thought maybe
22 the language --

23 CHAIRMAN EATON: Yes.

24 MS. TOBIAS: Again -- let me read it again
25 and see if --

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1 CHAIRMAN EATON: I'm always getting my
2 drafting skills out of hand.

3 MS. TOBIAS: It would say, "But allow for
4 an exception if the Board or the Executive Director, when
5 acting under expressed delegation."

6 CHAIRMAN EATON: Right.

7 MS. TOBIAS: "For good cause determines,"
8 so I think that's a fairly narrow circumstance.

9 CHAIRMAN EATON: That's what I'm trying to
10 get at.

11 MS. TOBIAS: It would have to come under
12 those expressed items that he has delegation of power.

13 CHAIRMAN EATON: It's just a drafting
14 thing more than anything because -- I think that will
15 solve the problem.

16 MS. TOBIAS: We tried to word it separately
17 so that the Board would be clear on what the two were, but
18 I think a hybrid certainly works on that.

19 BOARD MEMBER PENNINGTON: That works for
20 me. It's certainly not a referendum on the Executive
21 Director.

22 MS. TOBIAS: And we certainly didn't mean
23 it to be either.

24 BOARD MEMBER PENNINGTON: I just think it's
25 near and dear to our hearts, and most particularly Steve

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1 and I got burned on this Cy Schwartz thing, and I think it
2 kind of sticks to us that somehow we should have been able
3 to have caught that and made sure. And we're still
4 hearing from Mr. Schwartz.

5 BOARD MEMBER JONES: Yes, we are.

6 CHAIRMAN EATON: All right. Let me take a
7 crack at it. How's that? Then we'll see. I think I
8 heard Ms. Moulton-Patterson, I think it gets in her point,
9 as well as what Mr. Pennington's and Mr. Jones's
10 historical perspective would be, that the Board would
11 adopt option number three with the following amended
12 language: "Retain copyright to all works created under
13 contracts or other agreements entered into by the Board
14 but allow an exception if the Board or the Executive
15 Director under expressed delegated authority for good
16 cause determines -- for good cause to exist to allow the
17 contracting party." It's kind of what you said --

18 MS. TOBIAS: That's fine.

19 CHAIRMAN EATON: -- to retain the copyright
20 with requirement that the Board's granted a broad light.
21 It gives you the best of both worlds under any
22 circumstances. We don't have to come back to a meeting or
23 anything, and does that seem to fit with what -- I think
24 it's the same thing.

25 MS. TOBIAS: I think it's a hybrid between

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1 the two and it's fine with us.

2 CHAIRMAN EATON: Right.

3 BOARD MEMBER JONES: I'll second that.

4 CHAIRMAN EATON: Okay.

5 Mr. Eaton moves and Mr. Jones seconds that
6 we adopt option number three as amended, and that we move
7 to adopt Resolution 2000-130 with the amended option.
8 Mr. Jones seconds that.

9 Madam Secretary, please call the roll.

10 BOARD SECRETARY: Board Members Jones.

11 BOARD MEMBER JONES: Aye.

12 BOARD SECRETARY: Moulton-Patterson.

13 BOARD MEMBER MOULTON-PATTERSON: Aye.

14 BOARD SECRETARY: Pennington.

15 BOARD MEMBER PENNINGTON: Aye.

16 BOARD SECRETARY: Roberti.

17 Chairman Eaton.

18 CHAIRMAN EATON: Aye.

19 All right. Last item of the agenda is
20 continued Item A.

21 MS. FRIEDMAN: Good morning, Chairman
22 Eaton and Board Members. For the record, I'm Judy
23 Friedman.

24 CHAIRMAN EATON: You're supposed to be
25 first but you're last, so we'll ask that later on.

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1 MS. FRIEDMAN: The supplemental report to
2 the Budget Act of 1999 requires the Board to report to the
3 Chairs of the Fiscal and Pertinent Policy Committees of
4 both houses originally on or before January 10th on A,
5 status of the Board's implementation of the Integrated
6 Waste Management Act of 1989; and B, actions necessary to
7 ensure compliance with the Act's provisions including
8 landfill permitting requirements. Please note that the
9 Board has requested an extension for this report until
10 March 2000.

11 Since late August I've been overseeing the
12 development of a report to fulfill this requirement, and
13 in January an agenda item containing the draft of the
14 report was heard at the Board, and during that meeting I
15 went over how the report was developed and indicated that

16 the third section of the report was still under
17 construction. At that time the direction to staff was to
18 work with Board Member offices to revise the report and
19 return to the February Board meeting for adoption.

20 Since I last presented this report, it has
21 undergone several changes. First, there's a new title to
22 the report called "Achievement, Progress and Promise: A
23 Ten-Year Status Report of the Integrated Waste Management
24 Act."

25 Second, the third section of the report

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1 titled "Looking to the Future" has been restructured into
2 seven major headings as follows: Enforcement of
3 Diversion Mandates Beyond 2000, Greening Government,
4 Toward a Sustainable California, Environmental Education
5 and School Programs, Environmental Health and Safety,
6 Funding Issues, and Public Outreach and Information
7 Management. Reflecting the Board's investigation of the
8 future, these seven headings raise issues of concern and
9 offer general recommendations for dealing with these
10 issues.

11 Third, the appendix to this report, which
12 has been under construction, is now presented. This
13 appendix contains technical information that is referenced
14 in the report but inclusion of which in the report itself
15 would greatly increase its length. The kinds of things in
16 the appendix includes a listing of all the jurisdictions'
17 diversion rates, which is some 30-odd pages; a chronology
18 of all the legislative amendments to the Act, again a very
19 lengthy table; and a listing of training available to
20 Local Enforcement Agencies. Those are the types of things
21 that are in the appendix.

22 Fourth, the majority of the report has been
23 reviewed for removal of in-house language that Senator
24 Roberti requested at the last Board meeting. The report
25 will undergo another careful review prior to publication

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1 to remove any remaining in-house language so that it's not
2 filled with jargon.

3 CHAIRMAN EATON: And the other thing,
4 Ms. Friedman, I see you finished the seven. And not to be
5 disruptive, but I know the Senator wanted to be here for
6 this item. He's going to be here. If you'll finish the
7 seven recap, then what we'll do is we have a short little
8 closed session item and we'll come back out and we can
9 finish up. So if you can just kind of go through the
10 seven -- and I apologize, but I think -- I know it was
11 something that was very important to him and so he should
12 be here very shortly.

13 MS. FRIEDMAN: Okay.

14 CHAIRMAN EATON: So what we'll do is we'll
15 finish up your short summary there --

16 MS. FRIEDMAN: Okay.

17 CHAIRMAN EATON: -- and then we'll come
18 back and finish it up while he's present.

19 MS. FRIEDMAN: Okay. And then fifth,
20 there's a greater emphasis on environmental education and
21 school programs in accordance with Board Member
22 Moulton-Patterson's wishes at the last Board meeting.
23 Would you like to stop there?

24 CHAIRMAN EATON: Sure. We'll just recess
25 and go into closed session. And Mr. Cupps, you'll have

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1 an opportunity to --

2 MR. CUPPS: I'll be happy to wait until
3 after closed session.

4 CHAIRMAN EATON: We'll stand in recess for
5 closed session.

6 (Closed session held)

7 CHAIRMAN EATON: The Board will be back
8 in session.

9 Madam Secretary, would you please call the
10 roll.

11 BOARD SECRETARY: Board Member Roberti.

12 BOARD MEMBER ROBERTI: Which item are we
13 on?

14 CHAIRMAN EATON: Here.

15 BOARD MEMBER ROBERTI: Oh, here.

16 (Laughter)

17 CHAIRMAN EATON: Okay. Let the record
18 reflect that. Senator, any ex parte communications to
19 report?

20 BOARD MEMBER ROBERTI: No.

21 CHAIRMAN EATON: Okay. And if you can just
22 do a housekeeping matter since the roll is still open on a
23 number of items, Madam Secretary, if you would just please
24 call those items and then Members who weren't present at
25 the time the vote was taken, it will be most helpful and

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1 that will complete those matters.

2 BOARD SECRETARY: Item 23. Board Member

3 Roberti.

4 BOARD MEMBER ROBERTI: Aye.

5 BOARD SECRETARY: Item 2. Board Member

6 Roberti.

7 BOARD MEMBER ROBERTI: Aye.

8 BOARD SECRETARY: Item 32. Board Member

9 Roberti.

10 BOARD MEMBER ROBERTI: Aye.

11 BOARD SECRETARY: Item 33. Board Member

12 Roberti.

13 BOARD MEMBER ROBERTI: Aye.

14 BOARD SECRETARY: Item 41. Board Member

15 Roberti.

16 BOARD MEMBER ROBERTI: Aye.

17 BOARD SECRETARY: Item 42. Board Member

18 Roberti.

19 BOARD MEMBER ROBERTI: Aye.

20 BOARD SECRETARY: Item 43. Board Member

21 Roberti.

22 BOARD MEMBER ROBERTI: Aye.

23 BOARD SECRETARY: Item 44. Board Member

24 Roberti.

25 BOARD MEMBER ROBERTI: Aye.

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1 BOARD SECRETARY: Item 47, motion one.
2 Board Member Roberti.
3 BOARD MEMBER ROBERTI: Aye.
4 BOARD SECRETARY: Item 47, motion two.
5 Board Member Roberti.
6 BOARD MEMBER ROBERTI: Aye.
7 BOARD SECRETARY Item 48. Board Member
8 Roberti.
9 BOARD MEMBER ROBERTI: Aye.
10 BOARD SECRETARY: Item 49. Board Member
11 Roberti.
12 BOARD MEMBER ROBERTI: Aye.
13 BOARD SECRETARY: Item 50. Board Member
14 Roberti.
15 BOARD MEMBER ROBERTI: Aye.
16 BOARD SECRETARY: Item 51. Board Member
17 Roberti.
18 BOARD MEMBER ROBERTI: Aye.
19 BOARD SECRETARY: Item 52. Board Member
20 Roberti.
21 BOARD MEMBER ROBERTI: Aye.
22 BOARD SECRETARY: Item 56. Board Member
23 Roberti.
24 BOARD MEMBER ROBERTI: Aye.
25 BOARD SECRETARY: Item 53. Board Member

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1 Roberti.
2 BOARD MEMBER ROBERTI: Aye.
3 BOARD SECRETARY: Item 40. Board Member
4 Roberti.
5 BOARD MEMBER ROBERTI: Aye.
6 BOARD SECRETARY: Item 45. Board Member
7 Roberti.
8 BOARD MEMBER ROBERTI: Aye.
9 BOARD SECRETARY: Item 54. Board Member
10 Roberti.
11 BOARD MEMBER ROBERTI: Aye.
12 BOARD SECRETARY: Item 57. Board Member
13 Roberti.
14 BOARD MEMBER ROBERTI: Aye.
15 BOARD SECRETARY: Item 59. Board Member
16 Roberti.
17 BOARD MEMBER ROBERTI: Aye.
18 CHAIRMAN EATON: All right. I believe that
19 completes the record for those items, if I'm not mistaken.
20 Last item -- and I apologize once again -- continued item
21 from yesterday, Item A, and the final item of today's
22 agenda, at least the public agenda.
23 Thank you, Judy.
24 MS. FRIEDMAN: Thank you, Chairman Eaton.
25 If I can indulge the rest of the Board Members, I would

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1 just like to recap a little bit for the Senator since
2 unfortunately he missed the first part of my presentation
3 and I think he might be interested, so if that's all right
4 with the rest of you.

5 Basically I just want to go over the
6 changes that have occurred in the report since the time we
7 heard it last, which was in January. First, there's a new
8 title to the report called "Achievement, Progress and
9 Promise: A Ten-Year Status Report of the Integrated Waste
10 Management Act". Second, the third section of the report
11 titled "Looking to the Future" has been restructured into
12 seven major headings as follows: Enforcement of Diversion
13 Mandates Beyond 2000, Greening Government, Toward a
14 Sustainable California, Environmental Education and School
15 Programs, Environmental Health and Safety, Funding Issues,
16 and Public Outreach and Information Management.
17 Reflecting the Board's vision of the future, these seven
18 headings raise issues of concern and offer general
19 recommendations for dealing with those issues.

20 Third, the appendix to this report, which
21 has been under construction, is now presented. This
22 appendix contains technical information that is
23 referenced in the report but inclusion of which in the
24 report itself would greatly increase its length, and the
25 kinds of things in the appendix include a listing of all

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1 jurisdictions' diversion rates, a chronology of all
2 legislative amendments to the Act, and a listing of
3 training available to LEAs. Those are the types of
4 things that are in the appendix.

5 Fourth, the majority of the report has
6 been reviewed for removal of in-house language that the
7 Senator requested at the last Board meeting. The report
8 will undergo another careful review prior to publication,
9 however.

10 Fifth, there's a greater emphasis on
11 environmental education and school programs in accordance
12 with the request of Board Member Moulton-Patterson.

13 As I mentioned last time, if I were to
14 summarize in a few words what the results of our analysis
15 and this report indicates, I would say that in the decade
16 since the Act's passage we've made tremendous progress in
17 meeting the mandates. There has been a shift in the way
18 we think about waste and how we manage it, and there has
19 been a huge investment in the development of an
20 integrated waste management infrastructure that
21 corresponds to this shift. However, we have more to do
22 in the seven areas that I mentioned previously ranging
23 from enforcement of diversion mandates beyond 2000 to
24 maximizing environmental education and school programs.

25 Although there are still some technical

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1 edits to be made to this report including a final
2 run-through for in-house language, it's my recommendation
3 at this time that the Board adopts the report and the
4 appendix and then direct staff to finalize the report for
5 publication by March 1st so that we can meet the
6 deadline.

7 Resolution 1999-612 will be amended to
8 reflect adoption of the report as of this month's Board
9 meeting. It's structured as a December-January item and
10 so it needs some minor changes.

11 Basically at this time I'm concluding my
12 presentation. I'm open for questions and any other
13 direction that you may have or discussion.

14 CHAIRMAN EATON: Questions of
15 Ms. Friedman? Ms. Moulton-Patterson.

16 BOARD MEMBER MOULTON-PATTERSON: Not a
17 question, but I just wanted to thank you for putting in
18 the section on environmental education. I found it very
19 helpful to me and I think it's really important and I
20 appreciate you putting that in.

21 CHAIRMAN EATON: Mr. Jones.

22 BOARD MEMBER JONES: We're making comments
23 on this part?

24 CHAIRMAN EATON: Yes, sir.

25 BOARD MEMBER JONES: I've got just a

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1 couple of general comments. I think the one thing that
2 we need to include in this is the memo that
3 Mr. Chandler -- maybe not the memo but the heart of the
4 memo Mr. Chandler gave us -- especially when it talks
5 about beyond the 50 percent. What I'm getting at, the
6 memo that in 1999 only 100,000 more tons went to
7 landfills in the state of California in this booming
8 economy says that the programs are working. I think you
9 tie that to beyond 50 percent. If you read Waste News
10 Magazine that took the top 25 cities in the nation and
11 where they were with their recycling rates, all of those
12 cities and -- or all of those states that had no mandated
13 goals were languishing somewhere around 3 percent, 5
14 percent, 7 percent.

15 The dollars that cities, counties and the
16 industry has invested in the infrastructure, we need to
17 make a correlation that in fact the programs are working
18 and the investment works, and if it becomes a stranded
19 cost, it's not fair to the cities or counties. I think
20 that's appropriate in beyond 50 percent, to tie that not
21 so much to let them know that it is because of the
22 mandate that cities and counties responded and here's the
23 evidence, but that you talk about the success. 100,000
24 more tons in this economy to go to a landfill tells you
25 that the programs are working, the cities have been

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1 successful, the industry has been successful, and I think
2 the legislature needs to know that this in fact did work.

3 I think that the item on regional
4 landfills sort of references mega landfills. It
5 referenced -- and I think there's a bigger policy issue
6 here. The use of rail and inexpensive large landfills, I
7 think if you ask anybody that's bringing waste to those
8 landfills or those people that are building those
9 landfills, they wouldn't term them inexpensive. It's
10 only inexpensive because of the volume and the operating
11 issues that go along with them that make them more price
12 competitive than somebody that's taking 400 tons. That's
13 just real life story.

14 So there are two parts to regional
15 landfills. One part to regional landfills are in
16 fact, and we refer to it, that Subtitle D had basically
17 closed a lot of smaller landfills because they couldn't
18 comply. That would be like the regional landfills like
19 Puente Hills, Portrero Hills, B&J landfill. Those are
20 regional landfills that take in waste streams from
21 surrounding territories.

22 The mega landfills -- and the only two
23 that we've really seen as mega landfills are the Mesquite
24 landfill and the Eagle Mountain landfill. Both of them
25 are reclamation projects. Both of them are rail haul and

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1 serving an area that is going to be without landfill
2 capacity. And just the nature of southern California and
3 the urban issues with how do you continue to grow
4 landfills in an urban, explosive area, this -- and this
5 is where I get to the policy issue -- this provides a --
6 because of the conditions that were put on it, a more
7 environmentally sound transportation method, and it --
8 and I think this is critically important to the report --
9 both of those permits said, stated as their conditions,
10 that they would not accept waste from any jurisdiction
11 that did not meet AB 939 mandates and that the material
12 had been MRF'd.

13 So that means that the waste stream that's
14 going through has already had any recoverable recyclables
15 pulled out, had any household hazardous waste or
16 hazardous waste pulled out before it ever went there. So
17 the bigger policy issue is -- and I think which we've
18 discussed as part of the items when they came forward --
19 was that these facilities offer long-term, viable
20 disposal capacity for the biggest part of the state as
21 far as population goes.

22 So I think we need to separate those two
23 issues and tie those issues to compliance with AB 939, as
24 well as the long-term effects of people making garbage
25 every day. I keep telling you death, taxes and garbage.

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1 My other issue is --

2 BOARD MEMBER ROBERTI: We'll chisel that
3 into stone for you.

4 (Laughter)

5 BOARD MEMBER JONES: Exactly. I've told my
6 wife. That's what I want on my headstone. Death, taxes
7 and garbage, the only three things you'll never get rid
8 of. We can just recycle a heck of a lot of it.

9 My last issue -- my last issue -- you know
10 what? I've got all these nice little tags. Oh, no. I
11 guess I have it. The other thing that I'm going to ask
12 is that we tie our conclusions to the issues we've raised
13 in section two. I think we've down done a pretty good
14 job, but I think there's time between now and next week
15 that we go through that and tie those six together.

16 CHAIRMAN EATON: Okay. All right. Any
17 other comments from Board Members?

18 I know we have some public testimony.
19 Hearing none, Mr. Cupps, if you want to come up while
20 we're making some evaluations.

21 MR. CUPPS: Mr. Chairman, Members of the
22 Board, my name is John Cupps and I'm here today
23 representing the Mesquite regional landfill project.

24 I think Mr. Jones has pretty much already
25 addressed what I was concerned about. It had to do with

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1 the two paragraphs on regional landfill facilities. I
2 was concerned that the language, although it doesn't
3 expressly state this, at least implies that the rail haul
4 regional landfill facilities will somehow pose a threat
5 to undermine the AB 939 goals.

6 I simply -- I know for a fact that that's
7 not the case. I don't think this Board believes that and
8 I just wanted to call that to your attention and suggest
9 that that language ought to be taken a look at perhaps.

10 Thank you very much.

11 BOARD MEMBER JONES: The --

12 MR. CUPPS: It's on page 90 -- at the
13 bottom of page 96 --

14 CHAIRMAN EATON: Okay.

15 MR. CUPPS: -- and 97. There's just two
16 paragraphs there. They talk about the inexpensive cost,
17 if you will, of these regional facilities. Just to give
18 you some ballpark numbers, the Sanitation District says
19 that to do rail haul through their Puente Hills MRF will
20 cost about \$55 a ton. Now, my client doesn't necessarily
21 agree with that number. It obviously also includes the
22 cost of MRFing.

23 I've seen other numbers that suggest -- as
24 a result of some long-range strategic planning
25 discussions going on in Orange County that suggest that

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1 rail haul could be as inexpensive as \$33 to \$36 a ton at
2 the point where you put it on an intermodal facility,
3 after it's already gone through a MRF. That contrasts
4 with existing landfill disposal rates, at least at the
5 public facilities in L.A. County, of about \$18 a ton;
6 Orange County, \$18 a ton. So it's not as if there's this
7 huge price incentive to just ship the waste out to the
8 desert, number one.

9 The other thing that people need to
10 understand, and I think I've had this conversation
11 individually with each and every one of the Board
12 Members. Rail haul is very, you know, depends on and
13 supports, if you will, the same infrastructure that's
14 necessary to recycling.

15 If you have to take the waste to a
16 facility to MRF it, take out the materials, you're in
17 effect making rail haul a more competitive and viable
18 option because once you've MRF'd it, then you're going to
19 put it into a container. Once it's in the container, it
20 can compete, if you will. If you didn't have 939 to
21 force it to the MRF in the first place, rail haul would
22 be a lot further off into the distance. That's the
23 reality of the economics of it.

24 The fact is that rail haul really is
25 complimentary to the 939 goals and -- so we don't want to

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1 see this report at least leaving an implication that the
2 rail haul projects pose a threat to those goals.

3 Thank you very much.

4 CHAIRMAN EATON: So Mr. Cupps or Mr. Jones,
5 I'm just kind of playing around here. The use of rail
6 lines and inexpensive -- the use of rail lines, and if we
7 cut out the word "inexpensive" and just said "large
8 regional landfills which may provide a relatively
9 cost-effective" and in parentheses "fiscal as well as
10 environmental benefit has contributed to the movement of
11 solid waste," or something along those lines, to edit it.
12 Is that what you're sort of trying to rid yourself of,
13 that there may be like a life cycle cost that's not in
14 dollars and those kinds of things?

15 BOARD MEMBER JONES: Well --

16 CHAIRMAN EATON: That's like a final edit.

17 BOARD MEMBER JONES: I think what I would
18 like to do because --

19 CHAIRMAN EATON: I don't want to do the
20 language, but I'm just trying to --

21 BOARD MEMBER JONES: There's two issues.
22 I would propose that we work on the paragraphs and I can
23 shoot them to everybody's offices to comment. I think
24 staff has -- the motion that I -- if I make the motion,
25 it's going to be to try to tie these conclusions in the

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1 future to issues raised, wherever we can do that linkage,
2 do whatever editing is needed to be done because I know
3 there were some other people that had been working on
4 this that had a few things, and that I'd like to include
5 that 100,000 tons. If it's not appropriate for beyond 50
6 percent, somewhere else, but at least include on the
7 beyond 50 percent some of the historical data that came
8 out of that Waste News Magazine that shows those
9 jurisdictions, that those states that don't have the
10 mandates and how they're sort of languishing, and that we
11 take a cut at this regional to break it into two issues
12 because there are two issues. If that would be okay with
13 the other Board Members.

14 CHAIRMAN EATON: Make a motion on those
15 three items to be included as well as final edits.

16 BOARD MEMBER PENNINGTON: I just wanted
17 to -- Mr. Chairman.

18 BOARD MEMBER ROBERTI: That's fine.

19 CHAIRMAN EATON: Mr. Pennington, as long
20 as we get to see it Monday or before or Tuesday or
21 whatever. Go ahead, Mr. Pennington.

22 BOARD MEMBER PENNINGTON: Mr. Chairman, I
23 think it's -- I think we have a March 1 deadline so we
24 don't have a lot of time to do a lot of rewriting, and I
25 wouldn't expect that to happen. I just want to make the

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1 comment that except for the executive summary, our
2 strategic plan is not really referenced in this, and I
3 think we spent a lot of time and effort in developing the
4 strategic plan, which is a good plan. I'm sorry that
5 more of that wasn't put into it, and maybe in looking at
6 section three they might want to look and see if there's
7 some place that they can plug in a little bit of it.
8 Realizing that it's late in the game and we need to get
9 this done, I wouldn't want to create a major effort
10 there.

11 MS. FRIEDMAN: The strategic plan, as you
12 indicated, is referenced in the executive summary, and
13 then of course the way the report is structured with the
14 emphasis, for example, on the priority materials and the
15 local government and environmental, that all patterned
16 after the priority areas in the strategic plan, but it
17 isn't as explicit as what I think Board Member Pennington
18 is asking for. We could add some text talking about
19 strategic plan if you all would like that. That is
20 something we could do.

21 CHAIRMAN EATON: I think that's a valid
22 point. I think absolutely.

23 Mr. Jones.

24 BOARD MEMBER JONES: Mr. Chairman, good
25 job to everybody that worked on this thing. You did a

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1 yeoman's job, all of you.

2 BOARD MEMBER ROBERTI: I want to ditto
3 that and say I like the slightly jazzed up language in
4 the executive summary.

5 (Laughter)

6 MS. FRIEDMAN: We have a little more work
7 to do, but thank you.

8 BOARD MEMBER JONES: Mr. Chairman and
9 Board Members, I would like to -- there is no resolution
10 I'm assuming. Is there? We didn't get one in the
11 package.

12 MS. FRIEDMAN: There is a resolution, and
13 what I mentioned to you is there actually needs to be a
14 slight update to the one that you have in your package
15 and I have it here.

16 CHAIRMAN EATON: We don't have it in our
17 package. I don't, at least.

18 MS. FRIEDMAN: It was the original one
19 that was done.

20 BOARD MEMBER PENNINGTON: 1999-612.

21 CHAIRMAN EATON: Thank you.

22 MS. FRIEDMAN: The original one that was
23 done back in December. I've updated it to include --

24 BOARD MEMBER PENNINGTON: 1999-612.

25 MS. FRIEDMAN: -- the current date as well

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1 as the fact that we got -- we sought an extension to the
2 original January 10th date, that's how it's been updated.
3 I just finished that last night, so I apologize for not
4 getting it to you in advance.

5 CHAIRMAN EATON: So this is revised, then;
6 correct? 612 would be revised?

7 MS. FRIEDMAN: Correct. To the one that
8 was originally done in December.

9 CHAIRMAN EATON: Okay.

10 BOARD MEMBER JONES: Mr. Chairman.

11 CHAIRMAN EATON: Mr. Jones.

12 BOARD MEMBER JONES: I would like to move
13 adoption of Resolution 1999-612 to include that our items
14 raised in one and two get tied to our conclusions and
15 future, and that we do a little bit of work on the areas
16 that we had talked about on the regional landfills
17 including the strategic plan language in futures,
18 including that beyond the 50 percent issues, and any
19 other little editing issues that need to be done under --
20 between now and then, between now and when it's due.

21 CHAIRMAN EATON: And that they could be
22 distributed to the Board offices.

23 BOARD MEMBER JONES: And that they would
24 be distributed to the Board offices.

25 CHAIRMAN EATON: Okay.

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1 BOARD MEMBER PENNINGTON: I'll second that.

2 CHAIRMAN EATON: Mr. Jones moves and
3 Mr. Pennington seconds that we adopt Resolution 1999-612
4 with the amended task to be completed prior to
5 transmittal to the appropriate administration entities
6 prior to the due date and that those be distributed to
7 the Board offices, as well, prior to any transmittals.

8 Madam Secretary, please call the roll.

9 BOARD SECRETARY: Board Members Jones.

10 BOARD MEMBER JONES: Aye.

11 BOARD SECRETARY: Moulton-Patterson.

12 BOARD MEMBER MOULTON-PATTERSON: Aye.

13 BOARD SECRETARY: Pennington.

14 BOARD MEMBER PENNINGTON: Aye.

15 BOARD SECRETARY: Roberti.

16 BOARD MEMBER ROBERTI: Aye.

17 BOARD SECRETARY: Chairman Eaton.

18 CHAIRMAN EATON: Aye. Okay.

19 Mr. Chandler, are we getting clarification
20 with regard to --

21 MR. CHANDLER: Yes. I think Ms. Tobias is
22 prepared to give you a clarification to your question on
23 the continuing -- on the legal matter.

24 CHAIRMAN EATON: Okay.

25 MS. TOBIAS: Section 11126 of the

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1 Bagley-Keene Act says that a state body may hold closed
2 sessions during a regular or special meeting. By
3 "regular" it means a regularly noticed meeting, so it
4 means that if you have -- you may hold closed session on
5 any day which you've noticed a meeting. If you'll
6 recall -- I think some of you were still on the Board --
7 when we had committee meetings, we had extended the
8 notice on each of those agendas to include a notice for
9 closed sessions so that we had the additional opportunity
10 to meet on those days.

11 There is a provision for special meetings,
12 if you would like me to talk about that, where you can
13 set a special meeting for certain reasons. It does have
14 some pretty extensive noticing requirements on it, but
15 you can do that. Do you want me to go over that? Okay.

16 In Section 11125.4, it says that, "A
17 special meeting may be called at any time by the presiding
18 officer of the state body or by majority of the members of
19 the state body. A special meeting may only be called for
20 one of the following purposes where compliance with the
21 ten-day notice provisions would impose a substantial
22 hardship on the state body or where immediate action is
23 required to protect the public interest," and then it
24 calls out six exceptions. "To consider pending
25 litigation, to consider proposed legislation, to consider

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1 issuance of a legal opinion, to consider disciplinary
2 action involving a state officer or employee, to consider
3 purchase, sale, exchange or lease of real property, and
4 to consider license examinations and applications." So
5 those are the reasons that you could set a special
6 meeting.

7 In subsection B, that's where the noticing
8 requirements are, and let me try to do this quickly. It
9 says where a special meeting is called, state bodies shall
10 provide notice of the special meeting to each member of
11 the state body and all parties that have requested notice
12 of its meetings as soon as it is practicable after the
13 decision to call a special meeting has been made but shall
14 be delivered in a manner that allows it to be received by
15 the members and by newspapers of general circulation,
16 radio or TV stations at least one hour before. Notice
17 shall be made available to papers of general circulation.
18 Notice shall be provided to the general public by placing
19 it on electronic bulletin boards or other appropriate
20 mechanisms. The notice shall specify the time and place
21 of the special meeting and the business to be. No other
22 special notice shall be considered meeting of the body.

23 CHAIRMAN EATON: So if I'm hearing you
24 correctly, the hurdle of the burden is quite high with
25 regards to a special meeting.

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1 MS. TOBIAS: Obviously with Bagley-Keene,
2 that's for the benefit of the public.

3 CHAIRMAN EATON: Absolutely. No question.
4 Well, perhaps maybe then what we could do, and I've just
5 checked with my colleagues over here, and I think
6 Mr. Jones and Mr. Pennington said this, if we could
7 perhaps continue our closed session until about 1:15 this
8 afternoon, if that would be good, and it will only take
9 about 15 or 20 minutes or so and that way we'll avoid
10 putting in any unnecessary kinds of hurdles if that's okay
11 with everyone. So what we'll do is continue the closed
12 session until 1:15 this afternoon properly noticed because
13 we do have a luncheon.

14 Therefore, I will close the February Board
15 meeting to the public portion of it by asking is there any
16 additional public comment out there, and if so, if you'll
17 come forward now. Hearing, seeing and using every other
18 sense possible, that there is none.

19 I would like to say one thing. Even
20 though -- I wish both Mr. Jones and Mr. Pennington,
21 whatever their wishes, desires over the next couple days
22 that they be answered in whatever way that they can be. I
23 mean that. And Dan, as a final parting shot, as you once
24 told me, if you have enough space on your agenda item, it
25 will be filled up, and this morning is a perfect example

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1 of that.

2 I thank you, and see you all next month.

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1 STATE OF CALIFORNIA

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4 I, Terri L. Emery, CSR 11598, a Certified
5 Shorthand Reporter in and for the State of California, do
6 hereby certify:

7 That the foregoing proceedings were taken
8 down by me in shorthand at the time and place named
9 therein and was thereafter transcribed under my
10 supervision; that this transcript contains a full, true
11 and correct record of the proceedings which took place at
12 the time and place set forth in the caption hereto.

13

14

15 I further certify that I have no interest
16 in the event of the action.

17

18

19 EXECUTED this 10th day of March, 2000.

20

21

22

23

24

TERRI L. EMERY

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